

**LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD**

Meeting of March 25, 2010

Members in Attendance

Jeffrey Staub, Chairman  
Sara Jane Cate, Vice Chairperson  
David Dowling  
Richard Freeburn  
Gregory Sirb

Also in Attendance

Dianne Moran, Planning & Zoning Officer  
James Turner, Solicitor  
Steven Fleming, Township Engineer

**Docket #1276  
Appeal of the Zoning Officer's Decision**

Applicant: BAPS Temple  
Address: 5405 Locust Lane, Harrisburg, PA 17109  
Property: 5405 Locust Lane, Harrisburg, PA 17109  
Interpretation: A land development plan is required for the erection of a second church building.  
The applicant proposes to erect a one story, 3,200 square foot building.  
Grounds: Section 1107.100, of the Lower Paxton Township Subdivision & Land Development Ordinance pertains to this application.  
Fees Paid: March 1, 2010  
Property Posted: March 16, 2010  
Advertisement: Appeared in The Paxton Herald on March 10 & 17, 2010  
The hearing began at 7:05 pm.

Mr. Staub stated it is customary for the Board to enter as exhibits the application and site plans. The applicants had no objection to its doing so.

The following were sworn in: Dhanji Mistry, 307 Summit Drive, Lewistown, PA 17044; and Dianne Moran, Planning & Zoning Officer. Attorney Joseph Ricci was in attendance representing the applicant.

Mr. Mistry stated he has belonged to the Temple for the last three years, and has been of this faith since birth. He is one of five members of the committee that makes decisions for the Temple.

Mr. Ricci distributed some diagrams of the building and the proposal.

Mr. Mistry explained the temple is of Hindu faith. Men and women pray separately, and within the genders, they are split in to age groups: young children, teens,

and elderly. Each group has different teachings and classes. The top floor has the main entrance where the mootee, or statue is located. Everyone will stop and pray to the mootee before going to their separate assembly places, according to age and gender.

The lower level is used by the kids: kishur are the young boys and kishuri are the young girls, and the teen girls and teen boys. On the diagram there are zoned marked. Mr. Mistry stated that they are not rooms, but portions of one big room used for each different assembly. When that is done, the area is used for the food offering to their god.

There are 40-45 members, and the building is used for 6-8 hours every Sunday.

There have been difficulty in keeping the age groups and genders separate for purposes of educational classes and worship preparation. The young children use instruments and make a lot of noise. To accommodate the different groups needs, they are meeting at different times.

The adults and children also must meet separately. To accommodate this, the adults bring the children for their assembly and wait in the car or shop in the area. They may not wait in the building to comply with the separation requirements. When the parents are assembling or preparing for worship, the children often play outside or do something else.

The congregation has tried to overcome the challenges by meeting at staggered times from 1:00 to 8:00 pm.

In order to meet at the same time and in different rooms, the congregation proposes to build a new building for assembly, then the congregation can meet together afterwards.

The first photograph shows the Temple from the front, and the second shows the same vantage point, only closer. The third shows the back of the building where the proposed building will be erected. The auxiliary building is proposed to be located in the middle of the blacktop area. The height of the building will be 12 feet, which is not as high as the first building so it will not be visible from the street.

Mr. Turner marked the first 11 pages as applicant's exhibit 1, and the series of pictures as exhibits 2, 3, 4, and 5. The layout sketch is marked as exhibit 6.

Mr. Ricci asked about the size of the proposed building in relation to the existing building. Mr. Mistry stated the existing building is 4,800 square feet, and the proposed building will be 3,200 square feet. The new building will not be visible from the street because the existing building is 75 feet wide and the proposed building will be 40 feet wide, leaving 22 feet on either side. There are earthen berms on both sides with a height of 5-7 feet, the building will be 14.5 feet high, and the existing building is 26 feet high.

Mr. Mistry stated that they will not increase impervious coverage. There will be 77 feet to one side property line, 80 feet to the other property line, and more than 110 feet to the rear property line.

Mr. Ricci asked about adding parking to accommodate the new building. Mr. Mistry stated they have 41 spaces now, and are only required to have 10 spaces. The new space would be smaller than the existing Temple.

Mr. Ricci asked if the new building would have any purpose separate and apart from the temple itself. Mr. Mistry answered no, because everyone will come to the main level where the statue/mootee is located and they will pray. They will remove their shoes and do (doosha) or viewing, then they will go to their assemblies. After the assemblies, everyone will gather together at 6:30 to pray together. The assembly is held on the top floor.

Mr. Ricci asked if someone would be able to come to the Temple to pray in a quiet uninterrupted setting. Mr. Mistry stated that they are interrupted with people going through the sanctuary, and they cannot concentrate.

Mr. Ricci asked about the problems in the lower level. Mr. Mistry stated it is one large room shared by multiple groups. The groups are small, but they use instruments and sing, so it is not good for them to do the assemblies together. After offering food to their god, everyone takes a bite, so the preparation is taking up very much time.

Mr. Ricci asked how the new building would add convenience and comfort for the congregation. Mr. Mistry stated everyone could pray together at the same time slot, with their own privacy. During assembly, the members sit on the floor, except elders and sick may sit on chairs.

Mr. Mistry stated the second building would be used strictly for educational purposes and for preparation for worship, allowing the sanctuary to be used exclusively as a sanctuary. This would also allow the basement to be used for the Prasad without setting up and tearing down tables and chairs every time.

Mr. Sirb initially thought that all four categories had to apply in order to be exempt from land development requirements, however, the wording says "or" not "and". He stated the Township is using the formula in criteria #4, but the applicant is using #2 saying the new building is subordinate to the existing principle.

Ms. Moran stated the applicant is entitled to an addition of 1,234 square feet. She stated that she understood that the applicant is building another church building, and not an accessory building.

Mr. Turner asked if the new building is attached to the primary building. Mr. Mistry stated it is 15 feet away from the existing building. Mr. Turner asked if a person would go outside to get from one to the other. Mr. Mistry agreed that is correct. Ms. Cate asked if there will be a roof connecting the buildings. Mr. Mistry stated they would

build a roof so that people can walk protected from the weather. Mr. Turner asked if the roof is connected to both buildings. Mr. Mistry stated they have not planned that far.

Mr. Sirb explained that if it is not attached, you cannot have an addition of an accessory building because it will not be accessory, it will be an additional building. He stated that Ms. Moran's interpretation is correct between additional and accessory.

Mr. Ricci stated the plans at this time include a separate free standing building, that will not be attached physically to the other building.

Mr. Sirb stated that if the buildings are truly separate, the interpretation by the zoning officer is correct. Mr. Mistry stated they chose to keep them separate for fire safety, but would connect them if that is better.

Mr. Freeburn and Mr. Turner thought it should be interpreted the opposite: if it is attached, it is an addition, and the formula would apply; if it is not attached, it is not an addition, so the question becomes if it is accessory or not.

Mr. Mistry stated that everyone that comes to the Temple will come to the main level for their viewing, then disperse for assembly, then come back to pray together. The new building will not be an addition, it will be accessory to the main building.

Mr. Staub could not understand why this is an accessory use. He noted that his church has a sanctuary, classrooms, kitchen, multi-purpose room, offices and other things. He did not see that the worship preparation is subordinate to the church use of the other part of the church. Mr. Turner stated the idea is not accessory use but accessory building. The question is if the building is accessory to the primary building. Mr. Sirb stated that if it is, it cannot be attached. Mr. Turner stated it cannot be attached, and if it is in fact is an accessory, the formula would not apply and land development would not be needed.

Mr. Ricci stated Section 1107 of the SALDO has four exceptions from the requirement to do a land development plan, and they are separated by "or", so each stand independently. They are building an accessory building, as defined as subordinate to and serve the principle use. Mr. Mistry's testimony stated that it will be smaller than the principle use and hidden behind it, making it clearly subordinate. The addition of the second building will allow the primary building to be used as it was intended. He stated that the building must also be subordinate in area, which it is. It must contribute to the comfort and convenience and necessity of the occupants of the principle building. Mr. Mistry has provided testimony to this point. The accessory building has to be located on the same lot, which it is. Based on the definition of accessory building, Mr. Ricci stated they do meet all of the requirements. They also meet the ordinance both in substance and in form.

Mr. Ricci stated that even if the appeal is granted, the applicant will still be required to do a stormwater management plan as part of the construction. The main concern is if the new building will have an impact off-site. Doing a full land

development plan would require a survey of the 6-acre property. That will not provide the Township any additional useful information. The area of the new building is a very small portion of the land, and is well within the setbacks. Doing a land development plan will do nothing more than make an engineer very wealthy, it does not help the Township get information that will help protect the health and safety of the residents of the Township.

Mr. Sirb asked if one of the Township's concerns is water runoff. Ms. Moran answered yes. Mr. Ricci stated he understood that the ordinance requires a stormwater management plan. He also noted that the building area is located on an existing impervious surface. They are merely replacing one impervious surface with another.

Stephen Fleming, HRG, Township Engineer, 369 East Park Drive, was sworn in.

With regard to stormwater and impervious coverage, Mr. Fleming stated that they will be required to do a stormwater review. Under that review, he will pull the previous land development plan for the site to refer to the permitted impervious coverage. It is common that impervious coverage grows over time, but that does not mean it was permitted.

Mr. Fleming stated that the proposed building is 33% larger than the existing building. Even though the existing building is a total of 4,800 square feet, the footprint is only 2,400 square feet. The proposed building is much larger than the existing building, which does not support the testimony about which building is subordinate in size. Mr. Turner asked if it is true that the existing building is larger in total usable area but smaller in footprint. Mr. Fleming agreed with Mr. Turner's statement. Mr. Turner stated the ordinance is unclear in the discussion of how to decide which is subordinate.

Mr. Ricci stated there is no definition of subordinate, but there is a definition of accessory structure.

Mr. Freeburn stated he is hung up on section 1107.05.A, where it says it must be subordinate to and serve the principle use. He wasn't sure if the proposed building will serve the existing building. Mr. Ricci stated the principle building is the temple and the main worship space. The education and worship preparation will take place in the proposed building. This will allow the sanctuary to be used as a sanctuary, rather than using it for every aspect of the worship.

Mr. Turner asked what else the land development plan would provide the Township, if the applicant is willing to prepare a stormwater management plan. Mr. Fleming stated it would ensure that the parking lot is in conformance. It would also ensure that the impervious coverage does not exceed the allowable amount for the site.

Mr. Ricci stated there are no changes in the use of the Temple from the time the Temple took possession of the site. The building was in compliance with the zoning ordinances at that time.

Mr. Freeburn asked if the new building will require additional parking. Mr. Ricci answered no, and he explained that the ordinance requires one parking space for every five members. There are about 45-50 members, which requires 10 spaces. Even if ten more were needed, the total required would be 20 and there are 41 on the property.

Mr. Cate asked if the Temple anticipates increasing its membership with the larger facility. Mr. Mistry stated that the only way for growth is if someone of the faith moves to the area; they do not go out and convince new people to join the church, the members are born into the faith.

With regard to parking, Mr. Turner stated the ordinance requires 1 space per five seats in the room of largest capacity, not per five members. Mr. Ricci stated this religion does not have a series of pews; the members of the Temple pray in a squatting yoga pose, so the only way to calculate seating is by counting people. Mr. Turner stated that if that is the case the seating capacity of the largest room becomes the question. Mr. Mistry stated there is no need for more spaces, they never have more than 20 cars in a week. Mr. Staub stated the question is the seating capacity of the room. Mr. Turner asked if an occupancy permit was issued. Mr. Mistry answered yes, and the occupancy was approved for 49 people. Mr. Turner stated that the parking calculation is correct based upon the occupancy permit.

Mr. Freeburn asked the Township's position regarding counsel's interpretation that a stormwater management plan is required. Mr. Fleming agreed that it will be required.

Mr. Sirb stated he was concerned about stormwater, and that issue is taken care of. His next concern is still parking. Even though he agrees with the testimony, it may still not work in theory. He hoped that an agreement could be reached that someone from the Township do a calculation on parking and impervious coverage; as long as they are within the limits set forth in the ordinance, he could vote for this appeal. Mr. Turner asked if the impervious coverage would need to be identified in order to do a stormwater management plan. Mr. Fleming stated they would need to do that, as well as a survey. Mr. Fleming noted he would compare the submission with previous land development plans and verify the conditions on-site. If the impervious coverage is the same as what was approved previously, then their justification is accurate. If it isn't, they will have to account for the additional drainage.

Mr. Staub stated that the top two concerns are always drainage and parking. When he visited the site, he could not identify parking other than what is marked immediately in front of the building. Mr. Mistry stated they will repaint the 41 spaces this summer. They were there, but are faded, so they will repaint them.

Mr. Staub was concerned about how this section of the ordinance is written. There is potential for tom-foolery, where a shopping center could come in and say they are building a parking garage as an accessory use and there could be issues that may technically not apply under this ordinance as written. He suggested this issue should be looked into. Mr. Turner stated the intent of an accessory building seems to be a garage or

shed. There should be some maximum square footage. Mr. Fleming asked how it would serve a primary use, and if most of the patrons visit the smaller building, is it the principle use.

Mr. Sirb stated he would like to see an agreement include the following: impervious coverage study, stormwater study, and parking compliance. He would feel more comfortable with those things in place.

Ms. Cate asked if it would be just as easy to require a full land development plan. Mr. Freeburn stated the cost is the issue. Mr. Ricci stated the cost would be large enough that the small congregation which supports itself, would not be able to go forward. He stated this is an attempt to meet the needs of the Township without overburdening this religious group with unnecessary costs. Mr. Ricci stated they have estimated costs for a land development plan to be \$20-25,000. Mr. Turner suggested the stormwater plan is going to be the bulk of the costs. Mr. Fleming stated the next question becomes can a stormwater plan be done accurately without a land survey. Mr. Ricci suggested that the items the Township and the Board are concerned about will be addressed without the land development plan.

Mr. Mistry stated the building will be a steel pre-engineered building. It will sit on the area in the rear of the building, not on any existing parking spaces.

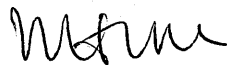
Mr. Staub called for comments from the audience.

Mr. Staub introduced a Boy Scout in the audience: Tim Hartland, who is working on his communications badge, and his father Daryl.

Mr. Freeburn made a motion to grant the appeal, based on unique circumstances and facts of the case. Mr. Sirb seconded the motion. Mr. Sirb suggested the following conditions be added to the motion: a proper stormwater study be done; parking be at Township code. Mr. Mistry agreed to the conditions. Mr. Freeburn agreed to amend the motion. Mr. Sirb seconded the amendment. A roll call vote followed: Mr. Freeburn-Aye; Mr. Dowling-Aye; Mr. Sirb-Aye; Ms. Cate-Aye; and Mr. Staub-Aye.

The hearing ended at 8:04 pm.

Respectfully Submitted,



Michelle Hiner  
Recording Secretary

IN RE: : BEFORE THE LOWER PAXTON  
APPLICATION OF : TOWNSHIP ZONING HEARING BOARD  
BAPS TEMPLE : DAUPHIN COUNTY, PENNSYLVANIA  
: DOCKET NO. 1276

### **DECISION GRANTING APPEAL**

The applicant appeals from the decision of the zoning officer requiring the submission of a land development plan. A hearing on the application was held on March 25, 2010.

#### **Facts**

1. The appellant and owner of the property in question is BAPS Temple of 5405 Locust Lane, Harrisburg, Pennsylvania 17109. The appellant was represented at the hearing by Don Hanjamistry, a committee member, and by Joseph A. Ricci, Esquire.

2. The property is located on the south side of Locust Lane and consists of a rectangular parcel with a lot area of approximately 1.7 acres. The parcel is improved with a two story structure with 4,400 square feet which is used as a worship center.

3. The appellant proposes to erect a 3,200 square foot building to the rear of the existing structure which would be used as an area for meditation and worship preparation. Religious requirements dictate the segregation of the worshipping congregation by age and sex for pre-worship activities and additional space is required to avoid the problems associated with multiple activities in a confined space.

4. The new building would be lower in elevation than the existing building and would be located to its rear, obscuring its view from Locust Lane. Setbacks in excess of 70 feet would be maintained to either side and over 100 feet to the rear of the property.

5. The zoning officer for the Township, by letter dated February 2, 2010, determined that a Land Development Plan would be required.

6. Article 1107.100(c) of the Subdivision and Land Development ordinance provides as follows:

(c) The following are excluded from the Land Development Definition:

. . . .

(2) the addition of an accessory building including farm building, on a lot or lots subordinate to an existing principal building . . .

7. Notice of the hearing was posted and advertisement made as required by the ordinance.

8. In addition to the appellant, the Township Engineer appeared to testify before the Board.

### **Conclusions**

1. The Township zoning ordinance excludes accessory buildings from the land development process.

2. The proposed new building is accessory to the existing worship center. The area of the new building is smaller than the area of the existing worship center and its contemplated use is clearly accessory to the primary use of the existing building as testified to by the appellant.

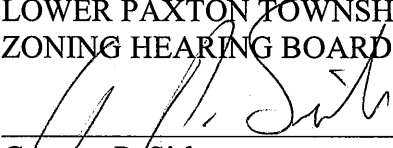
3. The existing ordinance does not place a cap on the area of an accessory building. In fact, there is nothing in the ordinance which would prevent an accessory building from exceeding in area the primary building. Accessory speaks to use, not size. The Board notes, however, that the building in question is smaller in area than the primary building as well as lower in street profile.

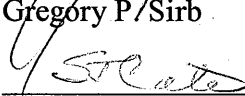
**Decision**

In view of the foregoing and having considered the plans and testimony submitted to the Board, it is the opinion of the Board that the appeal of BAPS Temple should be and is hereby granted, and the requirement of a Land Development Plan is waived. The Board notes that the appellant remains subject to Township stormwater and parking regulations.

Date: 4/22/10

LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD

  
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Gregory P. Sirb

  
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Sara Jane Cate

  
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Richard E. Freeburn

  
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David B. Dowling

  
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Jeffrey W. Staub

**LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD**

Meeting of March 25, 2010

Members in Attendance

Jeffrey Staub, Chairman  
Sara Jane Cate, Vice Chairperson  
David Dowling  
Richard Freeburn  
Gregory Sirb

Also in Attendance

Dianne Moran, Planning & Zoning Officer  
James Turner, Solicitor  
Steven Fleming, Township Engineer

**Docket #1277**

Applicant: Mike Wolgamuth

Address: 1401 Karen Drive, Harrisburg, PA 17109

Property: 1401 Karen Drive, Harrisburg, PA 17109

Interpretation: An unenclosed deck or porch may extend a maximum of fifteen feet into the required 30' rear setback.  
The applicant proposes to construct a deck which would extend into the rear yard setback, leaving only 11 feet to the property line.

Grounds: Section 307.C.2.c, of the Lower Paxton Township Zoning Ordinance pertains to this application.

Fees Paid: March 1, 2010

Property Posted: March 16, 2010

Advertisement: Appeared in The Paxton Herald on March 10 & 17, 2010

The hearing began at 8:14 pm.

Mr. Staub stated it is customary for the Board to enter as exhibits the application and site plans. The applicants had no objection to its doing so.

The following were sworn in: Mike Wolgamuth, 1401 Karen Drive, Harrisburg, PA 17109; and Dianne Moran, Planning & Zoning Officer.

Ms. Moran explained that the rear yard setback shall be 30 feet; however, an unenclosed deck may extend a maximum of 15 feet into the rear yard setback.

Mr. Wolgamuth read the following letter addressed to the Zoning Hearing Board, dated February 25, 2010.

*While I, Mike Wolgamuth, was in Iraq my wife, Melissa Wolgamuth, filled out an application for a "Deck for a Solider" contest. In January, we found out that we had won the contest and that we were going to have a deck built for free. As we were going about*

*the process with the people who are heading this project we found out that we do not have enough room from our property line to have a well proportioned practically sized deck. We are applying for a variance because we were told by the Zoning office that the setback for our property is 30 feet. However after more research we were told that we could actually go with in 15ft, which would leave 5 feet to build a large portion of the deck. We would like to extend that portion to 10 foot which would leave an 11 foot setback on our property. The deck would actually be L shaped and at the lower portion of the L we would have a 10x15 foot piece on the left side. The part we need the variance for is the 5x21 foot piece leading up to the 10x15 piece. If we would get the variance the dimensions will be and L shape with the top part of the L being 10ft by 21ft long. Then the lower half of the deck would be 10x20 the drawing explains it better. A 10 foot deck would greatly improve our quality of life and safety not only for ourselves but most importantly for our children. The builder is going to secure a safe railing around the deck which will allow my wife and I a greater peace of mind and freedom to allow our children to play outside in a safe environment. We also have a busy street next to our property and the larger deck with railing once again would help give our children more freedom to play. I like to entertain and grill and it would be safer to have a 10 foot deck to place my grill on. I really don't want to have a grill located on a 5 foot deck with the possibility of the children getting too close. We spoke with the neighbors and the builder and they agree that a 10 foot setback would be the best option. Frank and Carol Popp own the property that would be most affected by the deck being built. We explained all of this to them and they agree and support us 100%. Along with this letter, we have attached a signed document to confirm this. Also with the original setback being 30 feet our house is well into that at 21 feet to the property line. I have attached some pictures with some rough drawings on them along with a scale plan of what we intend to do. The picture with the most editing done shows the corner where the deck will come closest to the property line. There is a total of 21 feet to the property line. Once it is complete there would be 11 feet left at that corner. And that is the closest the deck will come to the line. The other side of the deck would come to a closely estimated 14 feet from the property line. I had the property surveyed in 2008 with permanent stakes put in. I had to buy and use a metal detector to find the stake but I assure you the measurement of 11 feet is correct. Also the picture with my wife holding the stake is showing in red a representation of how small a 5 foot deck would be. And in yellow how much more room we would have. This deck will also help to beautify the neighborhood. I have never written anything like this before so in closing please grant us the variance for over all safety, convenience, and quality of the neighborhood and our way of life. Thank you very much for your time. We look forward to your decision have a great day.*

Mr. Wolgamuth stated that he is grateful either way, and it makes him feel special that someone would be willing to do this for him, whether it is the size he is asking for or the size allowed by the ordinance. The deck builder anticipated a setback of 10 feet, which would have fit, but that turned out to not be the case. The builder donates the time and materials, and there are other volunteers that do some of the work. He noted he has been to Iraq twice and Kocevar once. Ms. Cate and Mr. Staub thanked him for his service.

Mr. Wolgamuth stated his house is on the corner of Locust Lane which is a very busy road and he does not want to build a fence, to be courteous to his neighbors.

Ms. Cate asked about the applicants' children. Mr. Wolgamuth stated one is 2, and the other will be 1 next month on the 17<sup>th</sup>.

Ms. Cate asked about the neighbors to the rear. Mr. Wolgamuth stated they are very supportive, but could not be in attendance.

Mr. Staub called for comments from the audience.

Mr. Peter Grabko, 1405 Karen Drive, was sworn in. He stated he has spoken to many of his neighbors about the situation. He noted that Mr. Wolgamuth has been a fantastic neighbor and a great addition to the neighbor. He and the other neighbors wanted to voice their support of his application; they have no objections to the deck.

Mr. Sirb made a motion to grant the application as submitted. Mr. Freeburn seconded the motion. Mr. Staub called for a roll call vote: Mr. Freeburn-Aye; Mr. Dowling-Aye; Mr. Sirb-Aye; Ms. Cate-Aye; and Mr. Staub-Aye.

Mr. Turner thanked Mr. Wolgamuth and his family as well.

The hearing ended at 8:28 pm.

Respectfully Submitted,



Michelle Hiner  
Recording Secretary

IN RE: : BEFORE THE LOWER PAXTON  
: TOWNSHIP ZONING HEARING BOARD  
APPLICATION OF : DAUPHIN COUNTY, PENNSYLVANIA  
:  
MIKE WOLGAMUTH : DOCKET NO. 1277

### **DECISION GRANTING VARIANCE**

The applicant seeks a variance from minimum rear yard setback requirements in connection with a proposed deck. A hearing on the application was held on March 25, 2010.

#### **Facts**

1. The applicant and owner of the property in question is Mike Wolgamuth of 1401 Karen Drive, Harrisburg, Pennsylvania 17109.
2. The property in question is located on the corner of Locust Lane and Karen Drive and consists of a rectangular parcel improved with a dwelling known as 1401 Karen Drive.
3. The applicant proposes to erect a ten feet wide L-shaped deck on the rear and side of the property. The deck would extend to within eleven feet of the rear property line. The deck would be uncovered.
4. The applicant would like the increase in the size of the deck to allow a play area for his children away from Locust Lane and to allow for use of a grill away from the walls of the house.
5. The applicant has discussed his proposal with his neighbors who did not object to the plan.
6. Notice of the hearing was posted and advertisement made as required by the ordinance.

7. In addition to the applicant, several neighbors appeared before the Board in support of the requested variance.

### **Conclusions**

1. Article 307.A of the ordinance establishes the rear yard setback at 30 feet. An unenclosed porch or deck may intrude into the setback a maximum of 15 feet. The proposed deck would violate this section of the ordinance.

2. Section 1137.04 of the ordinance gives the Zoning Hearing Board the power to authorize, in specific cases, variances from the terms of the ordinance and its supplements as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of the ordinance would result in unnecessary hardship. The ordinance further requires that the spirit of the ordinance shall be observed, public health, safety and general welfare shall be secured, substantial justice shall be done, and no appreciable diminution of the market value surrounding properties shall be caused by such variance.

3. The Board finds that the property is burdened by a hardship consisting of its limited depth which severely limits the developable area. The deck in question is reasonably necessary for the property's use and enjoyment given its location adjacent to a busy street.

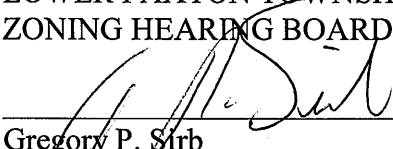
4. Granting the variance will not alter the essential character of the neighborhood nor adversely affect surrounding property values. The adjoining property faces Locust Lane so the area in question is more akin to a side yard in terms of its impact. Property values will not be impaired by this improvement project.

**Decision**


In view of the foregoing and having considered the plans and testimony submitted to the Board, it is the opinion of the Board that the variance requested should be and is hereby granted allowing the erection of a deck with a setback of not less than eleven feet.

Date: 4/22/10

LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD

  
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Gregory P. Sirb

  
\_\_\_\_\_  
Sara Jane Cate

  
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Richard E. Freeburn

  
\_\_\_\_\_  
David B. Dowling

  
\_\_\_\_\_  
Jeffrey W. Staub

**LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD**

Meeting of March 25, 2010

Members in Attendance

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Sara Jane Cate, Vice Chairperson  
David Dowling  
Richard Freeburn  
Gregory Sirb

Also in Attendance

Dianne Moran, Planning & Zoning Officer  
James Turner, Solicitor  
Steven Fleming, Township Engineer

**Docket #1278**

Applicant: Daniel Snow

Address: 7365 Appalachian Trail W., Harrisburg, PA 17112

Property: 203 Sunset Avenue, Harrisburg, PA 17109  
Parcels 35-045-037 & 35-045-246

Interpretation: The minimum lot area is 43,560 square feet for a building lot without both public sewer and public water.  
The applicant proposes to create two building lots at 9,300 square feet each.

Grounds: Section 307.A, of the Lower Paxton Township Zoning Ordinance pertains to this application.

Fees Paid: March 1, 2010

Property Posted: March 16, 2010

Advertisement: Appeared in The Paxton Herald on March 10 & 17, 2010

The hearing began at 8:29 pm.

Mr. Staub stated it is customary for the Board to enter as exhibits the application and site plans. The applicant had no objection to its doing so.

The following were sworn in: Dan Snow, 7365 Appalachian Trail West, Harrisburg PA 17112; and Dianne Moran, Planning & Zoning Officer. Mr. Les Jacobson was present on behalf of the applicant.

Mr. Snow purchased what was 6 lots in Sunset Avenue, each measuring 25'x124'. The side yard setbacks prohibit anything being built on any lot on their own. Thee lots were previously approved as part of the Plan of Paxtonia Gardens, May of 1922.

Mr. Snow met with Ms. Moran, Mr. Stine, Township Solicitor, and Mr. Wolfe, Township Manager. The outcome of that meeting was that the proper way to address the problem is to apply for a variance.

Mr. Snow explained that he proposes to combine three lots into one, and the other three into another lot. He proposes to build a house on each resulting lot, 75'x124'. One lot already has a house under construction. The lots at 75'x124' still do not meet the minimum lot area requirement.

The proposed lots will conform to the lots in the area. It would not change the character of the neighborhood in any way, and he feels it would enhance the neighborhood.

Mr. Staub asked about the meeting and if they discussed the dedication of additional right-of-way. Mr. Snow and Ms. Moran answered no.

Mr. Staub asked how the first house was able to get a permit. Mr. Snow stated the paper copies and the computer copies of the parcel maps showed different things, so the first building permit was issued based on the idea that the small lots were already combined.

Mr. Staub asked if this was an error on the part of the Township. Mr. Snow did not think it was, because the Township had no reason to think what they saw on the parcel map was outdated information. The second permit was denied because the Township then had the benefit of using the other format of the parcel map. At that time he learned that a formal lot consolidation is required, and a variance would be necessary to allow the smaller lots. Mr. Jacobson agreed the error was nothing more than miscommunication between the Dauphin County Tax Bureau and the Township, which is not uncommon. Mr. Jacobson further explained that the lot consolidation was recorded and acknowledged by the Tax Bureau, but the Township only gets updated maps once a year, so Township staff was looking at a map which showed the 6 lots as one. Mr. Freeburn asked if the permit was granted based on one lot of six small lots. Ms. Moran answered that that was correct. Mr. Freeburn asked if it is true that they now want to turn those six lots into two. Mr. Jacobson stated that is correct.

Mr. Jacobson stated they found half-a-dozen variances that were very similar if not identical to this request. He added that all other requirements will be met. There is public sewer, but not public water.

Mr. Freeburn asked Ms. Moran about the lots in relation to the other lots in the neighborhood. Ms. Moran explained that it would fit in well in the neighborhood, and would actually be larger than many of the surrounding existing lots. Mr. Staub stated he reviewed the tax maps of this area, and there is a wide variation of lot sizes. Mr. Dowling questioned the rationale for selling 25' wide lots. Mr. Jacobson suggested that time era had a common planning concept of row homes.

Mr. Staub asked about the home under construction, and if it would be built under the setbacks shown on the plan. Mr. Snow answered yes. Mr. Staub asked if there would be a need for further variances to make either home compliant.

Mr. Staub called for comments from the audience.

Ms. Linda Lawless, 205 Sunset Avenue, was sworn in.

Ms. Lawless stated she was ambivalent as to whether a house is built there or not. As long as she has lived there, there were always three homes on that side, and they each have a well. She asked how this would affect her well.

Mr. Staub recalled that there were issues with wells in Paxtonia Gardens when Paxton Towne Centre was constructed. He did not know if there were still issues from that or not. He was concerned about the impact of two more wells on the small lots in the existing dense development.

Ms. Lawless stated there was a well on the property. She did not know if adding one more well is an issue or not.

Ms. Lawless was also concerned about traffic. The other side of the street does not have off-street parking. A vehicle cannot get up or down. Mr. Staub stated that new home construction is required to provide for its own off-street parking using the paved driveway and/or the garage. Ms. Moran stated that two are required per dwelling unit, and each of these will have four. Ms. Lawless stated that does not change the parking on the other side of the street.

Mr. Staub asked if the homes will take access from Sunset or the other street. Mr. Snow stated they will use Sunset Avenue.

Ms. Lawless stated that the parking was a thought, but the real concern is the well.

Mr. Staub stated there are ordinances that govern such issues, but a hydrogeological study is not required since they are not going through the formal subdivision process. He suggested it could be a condition. Mr. Jacobson didn't know how one well would be an issue amongst hundreds of wells, especially when one was already on the lot. He did not go so far as to say it couldn't happen, but adding one to 400 seems unlikely to cause a problem. He also acknowledged her concern as a valid one. Mr. Staub suggested a study of this area would only need to include a 200-foot area to research the aquifer yield. Mr. Jacobson stated that a hydrogeological study was never a condition of the other variances granted for similar situations, and with each variance granted, another well was dug. Mr. Jacobson stated the houses being built are not expensive houses and adding this kind of cost would be detrimental.

Mr. Steve Hummelbaugh, 132 Sunset Avenue, was sworn in.

Mr. Hummelbaugh stated his property was originally eight 50' lots; then 3 lots were sold off on one side and two sold off on the other. They drilled wells and there were no problems. There were problems however, when Paxton Towne Centre was being excavated. The wells in the neighborhood were old and shallow, only 60 feet deep. His had to be redrilled, and it is now 160 feet, and there have been no problems. The water table has dropped and that affects shallow wells. He did not think building a house

is going to affect Ms. Lawless' well, especially since the new wells will probably be much deeper than hers. Mr. Turner asked if Paxton Towne Centre is on public water. Mr. Hummelbaugh stated the shopping center is on public water, but the excavation involved so much cutting and blasting, that it is more likely that it contributed to the dropping water table. Mr. Turner suggested that the wells in the area may fail simply because of collapsing, more than because of a lack of water. Mr. Hummelbaugh suggested that if Ms. Lawless did not have a problem when the shopping center was built, he did not think there would be any problem now. He asked her how deep her well is. Ms. Lawless did not know, but she was told it was deep.

Mr. Sirb asked about the cost to go from the 60' well to the 160' well. Mr. Hummelbaugh stated it was about 15 years ago, and cost about \$1,500 because he did a lot of the work himself. If he hadn't done his own work, it may have cost \$3-4,000.

Mr. Snow offered to do a flow test pre and post construction, and if there is a change, he will drill a new one for her.

Mr. Freeburn made a motion to grant the application as submitted, without conditions. Mr. Dowling seconded the motion. Mr. Sirb stated the offer provided by the applicant should be maintained. Mr. Turner stated the decision is based on the strict testimony given at the hearing.

Ms. Moran noted that the buyers are trying to meet a funding deadline of April 30<sup>th</sup>, and requested the decision be prepared as soon as possible.

A roll call vote followed on the motion: Mr. Freeburn-Aye; Mr. Dowling-Aye; Mr. Sirb-Aye; Ms. Cate-Aye; and Mr. Staub-Aye.

The hearing ended at 9:03 pm.

Respectfully Submitted,



Michelle Hiner  
Recording Secretary

IN RE: : BEFORE THE LOWER PAXTON  
: TOWNSHIP ZONING HEARING BOARD  
APPLICATION OF : DAUPHIN COUNTY, PENNSYLVANIA  
:  
DANIEL SNOW : DOCKET NO. 1278

### **DECISION GRANTING VARIANCE**

The applicant seeks a variance from minimum lot area in connection with a proposed lot consolidation. A hearing on the application was held on March 25, 2010.

#### **Facts**

1. The applicant and owner of the property is Daniel Snow of 7365 Appalachian Trail West, Harrisburg, Pennsylvania 17112. The applicant was represented at the hearing by Les Jacobson, Esquire.
2. The property in question is located on the corner of Sunset Avenue and Woodland Road and consists of six adjoining lots, each 25 feet wide and 124 feet deep. The lots were originally laid out in 1922. The property is zoned R-2.
3. The applicant proposes to combine the six lots into two lots, each 75 feet by 124 feet for a total area of 0.213 acres or 9,300 square feet.
4. A house was formerly erected on the property which had its own well for water service. Each of the proposed new dwelling will be serviced by public sewer and an on-lot well for water.
5. The existing pattern of development in the neighborhood is single family homes on small lots comparable to the lots proposed by the applicant.
6. In addition to the applicant, two neighbors appeared to testify before the Board. Steve Hummelbaugh of 132 Sunset Avenue testified that he had no objection to the proposal and that he felt it would not impact upon the water supply. The adjoining property owner, Linda Wallace, of 205 Sunset Avenue, testified as to concerns about

parking and water supply. The applicant testified that four parking spaces would be provided for each new dwelling, which exceeds the requirements of the ordinance. As to water supply, the applicant testified that he would pay for a flow study of the existing water supply at 205 Sunset and that he would pay to redrill the well at 205 Sunset if it was harmed by the new construction and well.

7. Notice of the hearing was posted and advertisement made as required by the ordinance.

### **Conclusions**

1. Section 307.A of the ordinance requires a minimum lot area of 43,560 square feet in the R-2 district for properties not serviced by both public sewer and water. The proposed combined lots would violate this section of the ordinance.

2. Section 1137.04 of the ordinance gives the Zoning Hearing Board the power to authorize, in specific cases, variances from the terms of the ordinance and its supplements as will not be contrary to the public interest, where owing to special conditions, a literal enforcement of the provisions of the ordinance would result in unnecessary hardship. The ordinance further requires that the spirit of the ordinance shall be observed, public health, safety and general welfare shall be secured, substantial justice shall be done, and no appreciable diminution of the market value surrounding properties shall be caused by such variance.

3. The Board finds that the properties are burdened by a hardship in that the existing lots are substandard. Because the surrounding area is fully developed they cannot be added to.

4. Granting the variance will not alter the essential character of the neighborhood which is characterized by single family homes on lots comparable to the lots proposed by the applicant. The only possible adverse impact of the proposal would be harm to the adjoining lot's water supply which the applicant has agreed to monitor and to correct if needed.

**Decision**

In view of the foregoing and having considered the plans and testimony submitted to the Board, it is the opinion of the Board that the variance requested should be and is hereby granted allowing the creation of two lots, each 75 feet by 124 feet. In all respects the applicant shall proceed in accordance with the testimony presented to the Board and shall comply with the subdivision process as required by the Township.

LOWER PAXTON TOWNSHIP  
ZONING HEARING BOARD

Date: 4/7/10

\_\_\_\_\_  
Gregory P. Sirb

Sara Jane Cate  
Sara Jane Cate

Richard E. Freeburn  
Richard E. Freeburn

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David B. Dowling

Jeffrey W. Staub  
Jeffrey W. Staub